

Special Session in Tennessee!

On June twenty-third, President Wilson appealed for a special ratification session in Tennessee in the following telegram to Governor Roberts:

"It would be a real service to the party and to the Nation if it is possible for you under the peculiar provisions of your State Constitution, having in mind the recent decision of the Supreme Court in the Ohio case, to call a special session of the Legislature of Tennessee to consider the Suffrage Amendment. Allow me to urge this very earnestly."

Immediately upon the announcement that this telegram had been sent, but before the receipt of the actual message, Governor Roberts stated that he would comply with the desire of President Wilson and that a session of the legislature would be called "in plenty of time to permit the women to vote in the November elections."

When the President's telegram was read to Alice Paul, Chairman of the National Woman's Party over the telephone from the White House, she issued the following statement:

"I am delighted at this evidence that the Democrats recognize the opportunity which they now have to give the final ratification and complete the enfranchisement of the women of the country. The National Woman's Party has contended that the Supreme Court decision made ratification by a special session of the legislature in Tennessee legal. We hope that action will be immediate."

On June twenty-fourth President Wilson sent the following letter to acting Attorney General William L. Frierson, asking for his opinion on the constitutionality of ratification by a special session of the Tennessee legislature. Mr. Frierson replied at once and rendered an opinion closely in line with the informal statement he had made to Miss Sue S. White, Tennessee chairman of the National Woman's Party, a few days before.

The correspondence between the President and the Acting Attorney General follows:

The White House, 24 June, 1920.

My dear Mr. Frierson:

A constitutional question has arisen in Tennessee with regard to the power of the legislature to act at once upon the pending suffrage amendment to the Constitution of the United States. A member of the Tennessee Congressional delegation has requested the view of the federal authorities on that question, and I would be very much obliged if you would look into the matter for me and let me have the view of the department, which I will be glad to communicate to the member of Congress who has made the inquiry.

Sincerely yours,

(Signed) WOODROW WILSON.

Hon. William L. Frierson,
Acting Attorney General.

June 24, 1920.

The President,
The White House.

Dear Mr. President:

I have the honor to acknowledge receipt of your note requesting my views as to the power of the present legislature of Tennessee, if called in extra session, to ratify the proposed suffrage amendment. I have recently discussed this question in some personal correspondence with the Attorney General of Tennessee, and hence am prepared to answer your inquiry promptly.

The constitution of Tennessee contains a provision to the effect that no legislature shall act on an amendment to the Federal Constitution unless elected after the proposal of the amendment. The present Tennessee legislature was elected before the suffrage amendment was proposed.

The ruling of the Supreme Court, however, in the recent Ohio cases, and the consideration which I gave to this question in preparing those cases for hearing, leave no doubt in my mind that the power of a legislature to ratify an amendment to the Federal Constitution is derived solely from the people of the United States through the Federal Constitution and not from either the people or the constitution of a state. The power thus derived cannot be taken away, limited, or restricted in any way by the constitution of a state. The provision of the Tennessee constitution above referred to, if valid, would undoubtedly be a restriction upon that power. If the people of a state, through their constitution, can delay action on an amendment until after one election, there is no reason why they can not delay it until after two elections, or five elections, or until the lapse of any period of time they may see fit, and thus practically nullify the article of the Federal Constitution providing for amendments. I am therefore confident that if the Tennessee legislature is called in session it will have the clear power to ratify the amendment notwithstanding any provision of the Tennessee constitution.

Respectfully,

WM. L. FRIERSON, Acting Attorney General.

TENNESSEE, the Volunteer State, where women now have the right of presidential and municipal suffrage, may yet be the deciding factor that will release the strength of the women of eighteen non-suffrage states for the November elections. This is the opinion generally entertained by those who have looked into the

question of whether or not the decision of the Supreme Court of the United States in the Ohio referendum case aside the provision of the Tennessee constitution, which until that decision, was regarded as an obstacle to ratification by the present legislature. The constitution of Tennessee says:

"No convention or general assembly of this state shall act upon any amendment of the constitution of the United States proposed by Congress to the several states unless such convention or general assembly shall have been elected after such amendment is submitted."

As an indication of the way this provision is now regarded in Tennessee the Democratic state convention which met in Nashville on June 8 passed the following resolution:

"We heartily favor the ratification of the nineteenth amendment to the Constitution of the United States bestowing on women the equal right of suffrage with men. In order that they may be placed on equal basis with men and that no discrimination may be shown in favor of either, we favor the imposition of a poll tax on women; and in order that this may be done before the November elections in which the women will participate, and to prevent any discrimination for or against either of the sexes, we demand that the governor call an extra session of the legislature and include in the call the subject of imposing a poll tax on women.

"In view of the recent decision of the Supreme Court of the United States in the Ohio case, the governor is requested, upon calling an extra session of the legislature, to include in the call the ratification of this amendment, provided it shall appear to be valid to do so."

As the opinion in the Ohio case is set out in full in another article in this issue of the SUFFRAGIST, it is not necessary to quote it here. Its application to the Tennessee constitutional restriction seems clear and unmistakable to the layman, and the best legal authorities take the same view. Opinions to this effect have been furnished the National Woman's Party by Senator Thomas J. Walsh of Montana and Hon. Joseph W. Folk of Washington, ex-governor of Missouri and a former Tennessean. Senator Walsh in his opinion says:

"The conclusion seems inescapable that if the people of the state of Tennessee may declare in their constitution that action by the legislature of their state on an amendment of the Constitution of the United States duly submitted shall be ineffective unless the members of the legislature shall have been elected after the amendment is submitted, they might with equal reason and propriety provide that the general assembly should not act in the premises unless two elections or three or ten have intervened; or they might provide that the general assembly should not act unless the governor specifically recommended the ratification in a message to the assembly, or unless the specific question had, prior to the election, been submitted to a referendum of the electors of the state and approved by them. There is, in my mind, scarcely any limit to which one must not go logically with respect to conditions and restrictions which may be thrown about the act of ratification by the legislature through constitutional provisions, if we admit the validity of the specific restriction appearing in the Tennessee constitution."

Governor Folk expresses his views as follows:

"This question seems to be settled by the decision of the Supreme Court of the United States rendered June 1, 1920, in the case of *George S. Hawke v. Harvey C. Smith*, secretary of state of Ohio. In that case the Supreme Court of the United States held that the federal Constitution provides the method for

its amendment, one of the methods being by the ratification of the legislatures of three-fourths of the states. The court held in that case that this authority of the federal Constitution can not be limited or restricted in any way by provisions of state constitutions. * * *

"If a state may restrict the power to ratify federal amendments by any legislature of that state, it may limit the power to ratify in other respects and thus nullify the provisions of the federal Constitution with respect to amendments. The provision of the Tennessee constitution in question is clearly an attempt to require that all proposals for the amendment of the federal Constitution shall be submitted to a vote of the people of the state as a condition precedent to ratification by the legislature of that state. This is what the Supreme Court of the United States has held could not legally be done. Therefore, in my opinion, ratification by a special session of the legislature, duly called by the governor, by proclamation including this subject, would answer the requirements of the federal Constitution and be a legal and binding ratification of the nineteenth amendment."

In view of the situation thus developed, the National Woman's Party has sent to Governor Roberts, through the Tennessee state chairman, a formal request for a special session of the legislature, in the following letter:

June 19, 1920.

My dear Governor Roberts:

Since the decision of the Supreme Court of the United States on June 1st in the case of *Hawke vs. Smith*, I have consulted a number of reputable lawyers, including the Solicitor General of the United States, Wm. L. Frierson, Hon. Thos. J. Walsh, U. S. Senator from Montana, Hon. Jos. W. Folk of St. Louis and Washington, and Hon. Frank P. Walsh of Kansas City and New York, in regard to the effect that the decision of the Supreme Court in the Ohio case may have upon the provision of the Tennessee constitution which attempts to restrict the power of the general assembly of Tennessee to act upon amendments to the federal constitution, unless the general assembly shall have been elected after such amendment is submitted.

Acting upon the expert legal opinions thus gathered, I am, as Chairman of the Tennessee Branch of the National Woman's Party and in behalf of the national organization of the Woman's Party, submitting to you this formal request that you call the General Assembly of Tennessee into extraordinary session for the purpose of ratifying the nineteenth amendment (popularly called the suffrage amendment) to the United States Constitution.

This request is made with a full appreciation of every doubt that could possibly arise as to the validity of ratification by the present Tennessee General Assembly, and after due consideration of the contingencies that might result should the doubt be resolved against the power of the legislature to act. In support of the request I am sending copies of opinions of Senator Walsh and Governor Folk. Every one with whom I have conferred has concurred in these opinions.

Your responsibility as Governor of Tennessee in this matter of national moment extends beyond the borders of our state, and I have therefore felt that you should have an expression representative of the nationally organized body of suffragists.

Sincerely yours,
SUE S. WHITE,